

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***Jan Lynn Owen**
Commissioner of Business Oversight

April 7, 2017

Re: Request for Opinion under the California Money Transmission Act

Dear _____:

Thank you for your letters to the Commissioner of Business Oversight, Jan Lynn Owen, dated October 14, 2016, and January 25, 2017. The Commissioner requested that I respond to this matter. In your letters, you seek clarification whether _____ is subject to licensure under the Money Transmission Act ("MTA") based on its bill payment services.

I. Background

_____ is a New York software provider that specializes in bill payments. _____'s software ("Software") allows licensed money transmitters ("Transmitters") to connect with participating service providers, such as telephone companies, utility companies and cable providers ("Billers"), in order to facilitate a consumer's payment of a bill. _____ intends to enter into a Transmitter API Master Services Agreement ("Transmitter Agreement") with Transmitters and a Biller API Master Service Agreement ("Biller Agreement") with Billers in which _____ has agreed to act as an agent for each. Pursuant to the Transmitter Agreement, _____ agrees that its services "relate to the receipt, acceptance, and transmission" of bill payments made to the Transmitter.

You describe the process as follows: A consumer visits a Transmitter, requests to pay a bill and provides the name of the Biller and the account information. The Software sends the account information to the Biller which confirms the existence of the account and the information provided. Once confirmed, the Software sends the name on the account, the balance due and the due date to the Transmitter. The consumer then pays the account balance to the Transmitter, and receives a standard money transmission receipt bearing the Transmitter's name and which otherwise complies with the receipt requirements of the MTA.

Once the Transmitter receives payment from the customer, _____, as the agent of the Transmitter, pays the Biller the amount of the customer's bill. The Transmitter then reimburses _____ for the amount of the bill.

1515 K Street, Suite 200
Sacramento, CA 95814-4052
(916) 445-7205

One Sansome Street, Suite 600
San Francisco, CA 94104-4428
(415) 972-8565

320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344
(213) 576-7500

1350 Front Street, Room 2034
San Diego, CA 92101-3697
(619) 525-4233

45 Fremont Street, Suite 1700
San Francisco, CA 94105
(415) 263-8500

300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
(213) 897-2085

7575 Metropolitan Drive, Suite 108
San Diego, CA 92108
(619) 682-7227

II. Discussion

Under Financial Code section 2030, no person may engage in the business of “money transmission” without a license, unless that person is exempt. Financial Code section 2003, subdivision (q) defines “money transmission,” in pertinent part, as “receiving money for transmission.” California Code of Regulations, Title 10, section 80.129 defines “receiving money for transmission” as “actually or constructively receiving, taking possession, or holding any money or monetary value for transmission. It does not include only receiving instructions, orders, or directions to transmit money or monetary value.”

_____ argues that it does not engage in money transmission. As _____ describes its business model, once the Transmitter receives funds from the consumer to pay a bill, the Transmitter (via software) gives _____ the go-ahead to pay the Biller. _____ then proceeds to pay the Biller from its own funds – thereby taking on a risk of loss – and then invoices the Transmitter for the amount that it paid. When the Transmitter pays on that invoice, _____ receives funds but retains those funds as reimbursement. In this sequence of events, _____ does not appear to “actually or constructively receiv[e], tak[e] possession, or hold[] any money or monetary value for transmission.”

To be clear: Although _____ itself does not engage in money transmission, it remains that DBO regulates the Transmitter in this transaction. And through such regulation of the Transmitter, DBO regulates the overall transaction from the time the California customer makes payment and is issued a money transmission receipt until the Biller receives payment.

III. Conclusion

Although the overall transaction is regulated by DBO through its regulation of the Transmitter, _____’s activities, if restricted to those described above, do not constitute money transmission. Our opinion is based on the facts, as we understand them, discussed above. Any changes to the facts or circumstances of this request may lead us to a different conclusion.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

STEPHEN LAU
Assistant General Counsel

JPL:is

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco